

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARY TOMKO,

Plaintiff,

v.

MASINELLI MANAGEMENT AND
CONSTRUCTION, INC. and TRITON
ENTERPRISES CORP.,

Defendants.

Case No. 22-cv-702-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Mary Tomko's motion for leave to proceed *in forma pauperis* (Doc. 2). A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the plaintiff's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

The Court is satisfied from Tomko's affidavit that she is indigent. The Court further finds that the action is not clearly frivolous or malicious and does not fail to state a claim.

Accordingly, the Court **GRANTS** the motion for leave to proceed *in forma pauperis* (Doc. 2).

The Court further **GRANTS** defendant Triton Enterprises Corp.'s motion for an extension of time to respond to the complaint (Doc. 16) and **ORDERS** that Triton shall have up to and including June 3, 2022, to answer or other respond.

IT IS SO ORDERED.

DATED: May 2, 2022

s/ J. Phil Gilbert

J. PHIL GILBERT
DISTRICT JUDGE